

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	CASE NO. 5:04 CR 545
)	
Plaintiff,)	
)	
vs.)	Judge Peter C. Economus
)	
MICHAEL JOHNSON,)	
)	
Defendant.)	<u>ORDER</u>

On May 10, 2005, the Defendant, Michael Johnson, was sentenced to forty-four (44) months imprisonment, followed by three (3) years of supervised release, for Possession of an Unregistered Sawed-Off Shotgun, a Class C Felony. His supervised release commenced on February 6, 2009.

On or about December 30, 2009, the U.S. Pretrial Services and Probation Office submitted a violation report alleging the following violations of the terms of supervised release:

1. **New Law Violation** - On 09/18/2009, the offender was cited for one count Failure to Control, one count Driving Under Suspension and one count OVI, Akron Municipal Court, 09TRD19037. Pretrial scheduled for 10/15/2009 at 9:30 a.m., continued to 10/27/2009 at 11:30 a.m., continued to 12/09/2009 at 8:30 a.m.

On 12/11/2009, the offender pled no contest and was found guilty of one count OVI, one count Failure to Control, Driving Under Suspension dismissed, Akron Municipal Court, Case No. 09TRD19039. The offender was sentenced to 180 days custody, 84 days suspended, 6 days Driver Intervention Program, 90 days

Electronic Monitoring, 14 days community service, one year license suspension and 6 points with fine and costs.

2. **Violation of Standard Condition No. 3** - The offender shall answer truthfully all inquiries by the probation office and follow the instruction of the probation officer. The offender failed to notify the probation officer that he was arrested by the Akron Police Department and subsequently cited and summoned to court on the above-noted charges.
3. **Use of Illicit Substances** - Urine sample collected 09/23/2009 was certified positive for opiates on 10/03/2009. Urine sample collected on 11/20/2009 was certified positive for codeine, morphine and cocaine metabolite on 12/04/2009. Urine sample collected 11/23/2009 was certified positive for codeine and morphine on 12/02/2009. On 12/22/2009, the offender's treatment provider contacted this officer and advised that Mr. Johnson admitted to using heroin on 12/05/2009 and 12/14/2009 or 12/15/2009.
4. **Absconding** - On 12/28/2009 at 10:59 hours, the offender left Oriana House, Inc., to seek medical attention at St. Thomas Hospital. Mr. Johnson has failed to return to Oriana House, Inc., his current whereabouts unknown.

The matter was referred to Magistrate Judge George J. Limbert to conduct the appropriate procedures and supervised release revocation hearing, if necessary. A warrant was issued for Mr. Johnson's arrest. The Defendant was arrested, and a supervised release violation hearing was scheduled for January 22, 2010.

The Defendant appeared before the Magistrate Judge for a violation hearing on January 22, 2010, and was represented by appointed counsel Thomas Kelley. The Defendant admitted to the violations as charged in the December 30, 2009 report. The Magistrate Judge has issued a report and recommendation, recommending that this Court find that the Defendant has violated standard and special conditions of his supervised release.

The Court has reviewed the Magistrate's report and recommendation and finds that

it is well-supported. The Defendant has admitted violations one through 4 (1-4) as charged in the Probation Office's December 30, 2009, violation report. As a result, the Court finds that the Defendant has violated the terms of his supervised release.

The Court has considered the statutory maximum sentence of two years pursuant to 18 U.S.C. § 3583(e)(3). The Court has also considered the advisory policy statements set forth in Chapter Seven of the United States Sentencing Guidelines prior to imposing sentence. The guideline range is 7-13 months pursuant to U.S.S.G. § 7B1.4(a). Furthermore, the Court has considered the factors for sentencing listed in 18 U.S.C. § 3553(a) and 3583(d).

The Court hereby **ADOPTS** the Magistrate's Report and Recommendation. (Dkt. # 27). Based on this Court's review of all relevant factors, the Court hereby orders that the Defendant's supervised release is **REVOKED**, and the Defendant is sentenced to nine (9) months imprisonment. Furthermore, the Defendant's remaining term of supervised release is hereby terminated. This Court recommends that Defendant be permitted to go to FCI McKean in Lewis Run, Pennsylvania, and that Defendant participate in substance abuse treatment and counseling.

IT IS SO ORDERED.

Issued: January 27, 2010

s/ Peter C. Economus
PETER C. ECONOMUS
UNITED STATES DISTRICT JUDGE